

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS J. BROWN,

Defendant-Appellant.

UNPUBLISHED

April 22, 2004

No. 243994

Wayne Circuit Court

LC No. 01-003282-01

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from conditional plea-based convictions of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b, for which he was sentenced to prison terms of twenty to forty years and two years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Before tendering his pleas, the defendant moved to suppress his statements on the ground that they were procured after he had been arrested without probable cause. The trial court disagreed and denied the motion. On appeal, the prosecutor concedes that defendant was arrested without probable cause, but asserts that defendant's statements were nevertheless admissible.

The general rule is that a "confession that results from an illegal arrest is inadmissible." *People v Richardson*, 204 Mich App 71, 78; 514 NW2d 503 (1994). However, "[t]he mere fact of an illegal arrest 'does not per se require the suppression of a subsequent confession.'" *People v Kelly*, 231 Mich App 627, 634; 588 NW2d 480 (1998), quoting *People v Washington*, 99 Mich App 330, 334; 297 NW2d 915 (1980). Suppression is only required if there is a causal nexus between the illegal arrest and the confession, where the "unlawful detention has been employed as a tool to directly procure any type of evidence from a detainee." *People v Mallory*, 421 Mich 229, 243 n 8; 365 NW2d 673 (1984); *People v Spinks*, 206 Mich App 488, 496; 522 NW2d 875 (1994). "Intervening circumstances can break the causal chain between the unlawful arrest and inculpatory statements, rendering the confession" sufficiently voluntary to purge the taint of the illegal arrest. *Kelly, supra*. Factors to be considered in determining whether a causal nexus exists include: (1) the time that elapsed between the arrest and the statement, (2) the flagrancy of police misconduct, (3) any intervening circumstances, and (4) events occurring before the arrest. *Spinks, supra*; *People v Malach*, 202 Mich App 266, 274; 507 NW2d 834 (1993).

Although the question is a close one, we find that the circumstances of this case indicate that defendant's statements were the product of free will and his illegal arrest was not employed as a tool to directly procure his confession. *Spinks, supra*. The police misconduct was not flagrant; there were no egregious circumstances apart from the mistaken determination of probable cause. This was not a case where defendant was arrested solely for the purpose of investigation, *People v Martin*, 94 Mich App 649, 653-654; 290 NW2d 48 (1980), or for the purpose of obtaining a confession. *Mallory, supra*. The facts known to the police were at least sufficient to justify an investigative stop, *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998), which weighs against a finding of flagrancy. See *Collins v State*, 707 So 2d 821, 822-823 (Fla App, 1998). In addition, there is nothing in the record to indicate that the investigation and arrest were carried out in such a manner as "to cause surprise, fear, and confusion." *Brown v Illinois*, 422 US 590, 605; 95 S Ct 2254; 45 L Ed 2d 416 (1975). Finally, defendant was also arrested in connection with another crime and the legality of that arrest has not been shown to be suspect.

Defendant was not interrogated about this offense until well into the day following his arrest and did not confess until twenty-four to twenty-six hours after his arrest, during which time he was taken to the hospital and allowed to rest or eat between interviews. He agreed to take a polygraph examination, which was conducted after defendant was allowed to rest. And he was repeatedly advised of and agreed to waive his rights before questioning. While not determinative of the question whether a confession is obtained by exploitation of an unlawful arrest, this is an important factor to be considered. *Id.* at 603. Additionally, defendant was not subjected to prolonged questioning regarding this offense and his constitutional rights were not otherwise violated. We will not reverse where the trial court reaches the right result for the wrong reason. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

Defendant argues that even if his statements were admissible despite the absence of probable cause for his arrest, they should have been suppressed because of a delay in arraignment. We disagree. Where a defendant pleads no contest, only rights and defenses which implicate the very authority of the state to bring a defendant to trial are preserved; any claims or defenses relating to the issue of factual guilt apart from those specifically preserved on the record are waived. *People v New*, 427 Mich 482, 491-493; 398 NW2d 358 (1986). Because defendant did not specifically preserve the issue, whether his statement was rendered involuntary by an unreasonable delay in arraignment, the issue was waived by his plea. *Owosso v Pouillon*, 254 Mich App 210, 221; 657 NW2d 538 (2002).

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski